IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5460 OF 2005

1. Sharif Hussain Hupale
2. Majid Hussain Hupale ...Applicants
Vs.
The State of Maharashtra ...Respondent

Shri. V. V. Purwant for the Applicants.
Ms M. M. Deshmukh, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 02, 2005.

P.C.:

1. Heard the advocate appearing for the Applicants and the learned A.P.P. for the State.

2. The learned advocate appearing for the Applicants submitted that on plain reading of the version of the first informant, it is very clear that there was a dispute between the members of the family of the first informant and the accused. The Applicants are the uncles of the first informant. The F.I.R. discloses that there was a dispute between the father of the first informant on one hand and the Applicants and their father on the other hand. It appears from the F.I.R. that the first informant, his father (deceased) and first informant's brother went to the house of the Applicant No.2 Majid and asked explanation as to why the deceased was earlier assaulted. He submitted that there was a fight between the two groups and in fact, the Applicants and other accused have also sustained injuries. He pointed out that a F.I.R. has been filed by the

Applicant No.2 against the first informant and others. He invited my attention to the medical certificates showing the injuries sustained by the accused persons. He submitted that the Applicants are entitled to be enlarged on bail. The learned A.P.P. has placed on record the material against the Applicants and submitted that the Applicants are not entitled to benefit of bail.

3. The F.I.R. discloses that there was altercation between the first informant, his brother and the deceased on one hand and accused persons on the another hand. Specific allegation made against the Applicant No.1 is that he assaulted the deceased on his head by a stick. The allegation against the Applicant No.2 is that he assaulted first informant on his back by a stick.

4. Thus, the role played by the Applicant No.2 is that he assaulted the first informant on his back by a stick. As far as the Applicant No.1 is concerned, it is the case of the prosecution that the blow given by him on the head of the deceased was fatal. Post Mortem Notes disclose that there were contusions on both parietal regions and there was subdural haematoma on both parietal region. Post Mortem Notes record that though there is no fracture of skul, the probable cause of death is head injury. The injury

certificates of the Applicant No.2 discloses that he has suffered one grievous injury and four simple injuries. The Applicant No.1 has suffered three simple injuries in the form of laceration, swelling and abrasion. The F.I.R. also discloses that during altercation between the two groups one blow of stick was given by the Applicant No.1 on the head of the deceased in the fight between the two groups. There is a substance in the submission that in any case there was no intention on the part of the Applicant No.1 to cause death. There are no criminal antecedents of the Applicants brought on record. The Applicants are in custody from 21st April, 2005 and chargesheet is already filed.

5. In my view, the Applicants are entitled to be enlarged on bail subject to stringent conditions. Hence, I pass the following order:

: O R D E R :

i) The Applicant No.1 shall be enlarged on bail in connection with **C.R.No.30 of 2005 of Akkalkot South Police Station,** subject to furnishing a personal bond of **Rs.15,000/-** with one or two local sureties in the like amount.

ii) The Applicant No.2 shall be enlarged on bail in connection with **C.R.No.30 of 2005 of Akkalkot South Police Station,** subject to furnishing a personal bond

of **Rs.5,000/-** with one or two local sureties in the like amount.

iii) The Bail is granted subject to condition that till the conclusion of the trial, the Applicants will not enter the village Hanjagi.

iv) The order will be given effect only after the Applicants furnish detailed address of place of their respective residence where they propose to stay after they are enlarged on bail.

v) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

vi) The Applicants shall co-operate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

vii) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

viii) Application is disposed of in above terms.

ix) The parties to act upon an authenticated copy of this order.

JUDGE